

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2258 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
 2. To be referred to the Reporter or not? -
 3. Whether Their Lordships wish to see the fair copy of the judgement? -
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge?
-

RAMLAL MAGANLAL PATEL

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR SM MAZGAONKAR for Petitioner

MR KG VAKHARIA WITH MR MJ VAKHARIA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/08/98

ORAL JUDGEMENT

By means of this petition, the petitioner sought for quashing the order dated 14-4-1986 passed by the District Development Officer, District Panchayat, Mahesana.

2. The petitioner was appointed as an Agriculture

Assistant. In his Service-Book the date of birth was 7-4-1928 was recorded on the basis of the vernacular final examination certificate. On the basis of that, he was to retire on 7-4-1986. He was subsequently promoted to the post of Agriculture Supervisor (Extension Officer). At the verge of his retirement one of his friends informed the petitioner that his date of birth was wrongly recorded in the vernacular final examination certificate and his correct birth date was 5-12-1929 and not 7-4-1928. Then he tried to find out as to what was his correct birth date from the Birth Register maintained by the office of the Mamlatdar, Kadi. His birth date was recorded in the Birth Register as 5-12-1929. It was also mentioned that he was vaccinated on 13-12-1930 and at that time the petitioner was aged about 12 months. The petitioner applied before the District Development Officer, District Panchayat, Mahesana for change of his birth date in the service record on 22-3-1985 at the verge of his retirement with the copy of the relevant extract of the Birth Register. The representation of the petitioner was decided by the District Agriculture Officer, District Panchayat, Mahesana by his order dated 23-12-1985. The authority concerned, relying on the provisions of the B.S.C.Rs., 1971 and GR of the General Department, Gujarat State dated 8-5-1978 rejected the representation of the petitioner. The petitioner filed a petition being Spl. C.A. No. 1452/86 challenged the order dated 23-12-1985 of the District Panchayat Officer, District Mahesana, Mahesana. This Court in that petition passed the order on 24-3-1986 in the following words.

"Mr. K.G. Vakharia, for the respondents Nos. 1 and 2 makes a statement that the respondent No. 1 shall consider and decide the representation of the petitioner dated 22-3-1985, a copy of which is produced at Annexure-A, on or before 10-4-1986. On this statement having been made, Mr. S.M. Mazgaonkar,, for the petitioner, withdraws the petition, which stands disposed of as withdrawn. The respondent no. 1 is hereby directed that if the petitioner so chooses, he may be given a personal hearing and that he may also permit the petitioner to add and/or to amend the representation dated 22-3-1985, if he thinks that too to be necessary."

3. The petitioner was given personal hearing by the District Development Officer, and considering the relevant rules and the material on the record rejected the application of the petitioner vide order dated 17-4-1986.

4. Learned Counsel for the petitioner submitted that the authority concerned decided the representation of the petitioner only on the basis of Rule 171 of the B.C.S.Rs. and not on merit of the case. I have gone through the order passed by the District Development Officer who has considered the date of birth mentioned in the Birth Register recorded in the School Leaving Certificate and as there was no valid reason to accept a certificate of small pox vaccination as evidence of birth certificate. The petitioner has applied for change of his date of birth when he was to retire and in support of his claim he has submitted that he and his friends were studying together and on the basis of the information of his friend, he checked the Birth Register maintained by the Office of the Mamlatdar, Kadi. The claim of the petitioner for change of his date of birth was not found reasonable under the provisions of Rule 171 of the B.C.S.Rs, 1971 and his birth date as 7-4-1928 did appear to be genuine hence his application was rejected. It is further pointed out by the learned counsel for the petitioner that Rule 171 of the B.C.S.Rs., 1971 states as follows :

5. "Requests made for alteration of date of birth should not be entertained after the preparation of the Service Books of the Government servants concerned and in any event not after the completion of the probation period or five years' continuous service, whichever is earlier. In the case, where there is no probation period such request should not be entertained after completion of five years' continuous service. The date of birth may, however, be permitted to be altered at a later stage if the Government is satisfied that a bona fide clerical mistake has been committed and that it should be rectified.

6. Learned counsel for the petitioner submitted that the aforesaid part of Rule 171 of the B.C.S.Rs. made enforceable by the amendment dated 8-6-1982 and at earlier stage there was no limit for making such alteration in the date of birth of any Government servant and the amendment which relates to alteration in respect of the bona fide clerical error is not applicable to the present petitioner. Even if it is presumed that there was no time limit for making change in the date of birth, the authority concerned has decided the matter after considering the certificate submitted by the petitioner and in accordance with the provisions of the law. Even it is presumed that there was no limit, the petitioner

should not be permitted to amend or alter his date of birth after a period of 30 years of his service particularly the date of birth was mentioned on the basis of the vernacular final examination certificate. Learned counsel for the petitioner has relied upon the decision in the case of Nagamuni Vs. Govt. of Andhra Pradesh and another, reported in AIR 1981 SUPREME COURT 864, wherein it has been observed that it is not necessary to decide the question as to whether the representation filed by the appellant was barred on the ground that it was not filed within 90 days of February 10, 1976 as provided by the rules of the Finance and Planning Department and it was observed that the aforesaid rule will govern those cases only in which the cause of action for applying for rectification of the date of birth arose prior to February 10, 1976. It could not have been possibly intended by the rule making authority that the opportunity for rectification of the birth date should be available to those persons only who had discovered prior to February 10, 19876 that the birth date recorded in the service register was wrong. For the sake of arguments even it is assumed that the amendment in the Rule No. 171 of the B.C.S. Rules. was not applicable and there was no time limit for making representation for rectification of the date of birth, the claim of the petitioners is not sustainable as the authority after considering the materials, on record and giving an opportunity of personal hearing decided the issue in accordance with law.

7. I have already discussed above that the petitioner at the verge of retirement seeking such rectification in his birth date is not sustainable in the eye of law. The petition has no merits and therefore, the same is dismissed, with no order as to costs. Rule is discharged.

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